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UNDERSTANDING JOBKEEPER FOR CHURCHES

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OPENING PRAYER

OVERVIEW OF AGENDA

- INTRODUCTION TO JOBKEEPER AND LEGISLATION UPDATES
 - *How it works*
 - *Eligibility*
 - *Turnover test*
- RISK FACTORS
 - *Contrived schemes*
 - *Key risks*
 - *Record keeping*
- THE SCHEME IN THE CONTEXT OF CHRISTIAN ORGANISATIONS
 - *Turnover test*
 - *Treatment of benefits and gifts*
 - *Religious organisations*
 - *Mission and overseas aid organisations*
- Q&A



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INTRODUCTION

What is the JobKeeper Scheme?

- *Regulated by the Coronavirus Economic Response Package (Payment and Benefits) Rules 2020 (the “Rules”)*
- *Wage subsidy program to help employers retain staff, paid directly to the employers*
- *From 30 March 2020 until 27 September 2020 (13 fortnights)*
- *Eligible employers will receive \$1,500.00 before tax per fortnight for each eligible employee (up to \$19,500.00 per employee)*
 - The business can also be entitled to the payment for one business participant who is actively engaged in operating the business.
- *The scheme is administered by the Australia Taxation Office. Application process:*
 - Is the employer eligible?
 - Ascertain eligible employees
 - Registration on the ATO website
 - Pay eligible employees \$1,500.00 each fortnight
 - Receive the reimbursement from ATO

Eligibility for Employers

The criteria is set out in Section 7 of the Rules. There are broadly two sets of criteria to satisfy:

1. First is that on 1 March 2020 the entity:
 - *Carried on business in Australia; or*
 - *It was a non-profit body that pursued its objectives **principally** in Australia*
 2. Second criteria is that you have to satisfy ‘decline in turnover’ test:
 - *Set out in Section 8 of the Rules.*
 - *30% fall in turnover for business with aggregated turnover of under \$1 billion*
 - *50% fall in turnover for business with aggregated turnover of over \$1 billion*
 - *15% fall in turnover for ACNC-registered charities **other than** universities and non-government schools*
 - Universities: Table A or Table B providers in the *Higher Education Support Act 2003*
 - Schools are defined as pre-schools, primary schools, secondary schools and education for children with disabilities
 - Bible colleges?
- Does not qualify if a liquidator or provisional liquidator has been appointed for the company - see section 7(2)(f) of Rules

Decline in Turnover Test

- *The turnover test period and the relevant comparison period are detailed in Section 8 of the Rules*
- *Test periods as follows:*

Fortnight cycle	Monthly Test	Quarterly Test
30 Mar to 12 Apr 2020	March or April 2020	1 April to 30 June 2020 (Q1)
13 Apr to 26 Apr 2020	April 2020	1 April to 30 June 2020 (Q1)
27 Apr to 10 May 2020	April or May 2020	1 April to 30 June 2020 (Q1)
11 May to 24 May 2020	May 2020	1 April to 30 June 2020 (Q1)
25 May to 7 Jun 2020	May or June 2020	1 April to 30 June 2020 (Q1)
8 Jun to 21 Jun 2020	June 2020	1 April to 30 June 2020 (Q1)
22 Jun to 5 Jul 2020	June or July 2020	Both Q1 and Q2
6 Jul to 19 Jul 2020	July 2020	1 July to 30 September 2020 (Q2)
20 Jul to 2 Aug 2020	July or August 2020	1 July to 30 September 2020 (Q2)
3 Aug to 16 Aug 2020	August 2020	1 July to 30 September 2020 (Q2)
17 Aug to 30 Aug 2020	August 2020	1 July to 30 September 2020 (Q2)
31 Aug to 13 Sep 2020	August or September 2020	1 July to 30 September 2020 (Q2)
14 Sep 2020 to 27 Sep 2020	September 2020	1 July to 30 September 2020 (Q2)

Decline in Turnover Test (continued...)

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- Can select any month during the 6 month life of the program: March, April, June, July, August or September.
- The test only has to be met once, but businesses will only be eligible for JobKeeper payments for fortnightly cycles that start on or after their nominated month.
 - *This means that if your business nominates a projected fall in GST turnover in May (against May 2019), you'll be eligible for the JKP starting in the first JKP cycle in or after May*
- If you nominate the first quarter, which is 1 April to 30 June 2020, you also compare that to the corresponding quarter period in 2019.
- Businesses that qualify under the June quarter will be eligible for payments from the inception of the scheme.

Decline in Turnover Test (continued...)

- The test only has to be met once.
- GST turnover:
 - *Can be actual turnover (e.g. March 2020 compared to March 2019)*
 - *Or forecast turnover (e.g. April 2020 or June 2020 quarter)*
 - *Turnover is on accruals basis but if you prepare your BAS on a cash basis you can use cash*
 - *For deductible gift recipients (DGR), deductible gift (for money or value) are included in turnover*
 - *For ACNC registered charities other than DGRs:*
 - Gift of money;
 - Property with a value of over \$5,000; or
 - Sharesare included in turnover (but not gifts from an associate)
- Only need to satisfy one of these, and only need to satisfy once and you will be eligible for full 6 months.
- you can elect to participate for a later fortnight, but you will miss out on the 30 March 2020 and 13 April 2020 fortnight payments.

Alternative Decline in Turnover Test

- *Coronavirus Economic Response Package (Payments and Benefits) Alternative Decline in Turnover Test Rules 2020*
- Provides an alternative for those businesses that weren't able to otherwise satisfy the turnover test under the Rules.
- For businesses that either:
 1. *Just commenced*
 2. *Just went through acquisition or disposal that changed the entity's turnover*
 3. *Went through a restructure that changed the entity's turnover*
 4. *Just had a substantial increase in turnover by:*
 - 50% or more in the 12 months immediately before the applicable turnover test period; or
 - 25% or more in the 6 months immediately before the applicable turnover test period; or
 - 12.5% or more in the 3 months immediately before the applicable turnover test period.
 5. *Was affected by drought or natural disaster during the relevant comparison period*
 6. *Has an irregular turnover for the quarters ending in the 12 months before the applicable turnover test period, excluding entities that have cyclical or regular seasonal variance in their turnover*
 7. *Is a sole trader or small partnership with sickness, injury or leave which impacts the sole traders ability to work which has affected the turnover*

Eligible Employees

- 'Eligible employee' in Section 9 of the Rules.
- What they must be:
 - *FT or PT employees as at 1 March 2020 – can be stood down or rehired employees*
 - *'Wage condition' – per Section 10 of Rules*
 - *Long-standing Casual employees – which means at least 12 months of employment as at 1 March 2020*
 - *They must be over 16 yrs of age, reside in Australia, and be either a PR or citizen or special category visa holder – sub 444.*
- What they must not be:
 - *In receipt of the payment from another employer*
 - *In receipt of parental leave by the Australian government in a fortnight or paid dad and partner pay*
 - *On WorkCover payment benefits for total incapacity*
 - *Long-term casual who is in employment of another entity*
- Business can also be entitled to the payment for one business participant who is actively engaged in operating the business.
 - *So who is a "business participant"? This is covered by Section 12 of the Rules, but does not include non-profit organisations.*
- 'Resident' here means:
 - *Australia resident within section 7 of the Social Security Act 1991; or*
 - *For the purposes of the Income Tax Assessment Act 1936 and holder of a special category subclass 444 visa holder*

Which Employees to Include?

- *The Government confirmed it as an ‘all-in’ scheme: must ensure that all of the eligible employees are covered by their participation in the scheme. As noted in the explanatory statement to the existing rules, this ‘one in, all in’ principle is already a key feature of the scheme and will be made clearer in the rules.*
- *Includes all eligible employees who are undertaking work for the employer or have been stood down.*
- *Employer cannot select which eligible employees will participate in the scheme.*
- *But employees may not wish to participate.*
- *No obligation to ‘top-up’ ineligible employees.*

Which Employees to Include? (continued...)



- *Do we have to put all our staff on JobKeeper? Specifically, in relation to staff who are paid less than \$1,500 per fortnight*
 - *Sect 6(1) of the Rules: “An entity (the employer) is entitled to a jobkeeper payment for an individual for a fortnight if: (d) the employer has satisfied the wage condition in section 10 in respect of the individual for the fortnight; and...”*
 - *Sect 10 of the Rules: “For the purposes of paragraph 6(1)(d), an employer satisfies the wage condition in respect of an individual for a fortnight if the sum of the amounts covered by subsection (2) equals or exceeds \$1,500.”*
 - *Accordingly, if the employee is paid under \$1,500 gross per fortnight from the employer, the employer is not able to receive \$1,500 per fortnight as a reimbursement from JobKeeper.*

JobKeeper for Long Service Leave



- *No provision that specifically relates to Long Service Leave.*
- *The leave exclusions that apply under Section 9(4) of the Rules relate to parental leave pay and dad and partner pay.*
- *Explanatory Statement: “A person who has been stood down or is on leave is considered to be an employee of their employer under the Fair Work Act 2009 and for the purposes of the JobKeeper payment.”*

Logistical Issues

- Must enrol through the ATO:
 - *By 30 April to participate in the first 2 fortnights*
 - *Thereafter before the end of any fortnight*
- For each eligible employee:
 - *Notify them of your intention to claim JKP in respect of their employment; and*
 - *Obtain a nomination notice (available on ATO website)*
- Pay each eligible employee at least \$1,500.00 per fortnight in cash or benefits (for the first 2 fortnights this must be done by 30 April). You can pay monthly but this must be equivalent of \$1,500.00 per fortnight.
- Register the details of employees:
 - *With STP software that has JobKeeper functionality, before 30 April (or the first fortnight)*
 - *if not using STP software with JobKeeper functionality, from 4 May onwards via the ATO Business Portal*
- Report monthly to the ATO via the ATO Business Portal:
 - *Any changes to eligible employees*
 - *Turnover for the current month and project turnover for the next month*
- The ATO will pay the JKP for the fortnights completed in the previous month:
 - *By the end of the first week of May; and*
 - *Thereafter by the 14th of each month.*



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RISK FACTORS

Contrived Schemes

Section 19 – sole or dominant purpose of achieving entitlement or increase:

Explanatory Statement:

*“Businesses, individuals and entities that deliberately enter into contrived arrangements with the sole or dominant purpose of reducing their turnover in order to gain access to JobKeeper Payment or increase the amount of JobKeeper Payment they receive will not be entitled to the payment or the increased payment and the general interest charge will apply on the overpayment under Section 19 of the Act. In addition, **significant administrative as well as criminal penalties are also likely to apply** to the parties involved in such schemes.”*

- If we are following the Rules and the Guidelines in ATO, then no contrivance.

Key risks

- Legislation was drafted with unprecedented urgency – last section in the Rules allows for further legislation and rules to be introduced to plug the loopholes (as seen on 24 April 2020).
- The object of the legislation – to maintain continuity of employment for workers.
- Reality of situation may not be as dire as predicted – \$130 billion scheme
- Structure of legislation and rules open to ATO Commission interpretation/discretion
 - *Significant definitional issues, self-assessment, estimates and judgment issues*
- Urgency in registration and payment
- Cashflow considerations
- Pressure from employees to participate (particularly stood down and casuals)
- Joint and several liability for certain acts (Sections 9 and 12)
- Documentation and record keeping
 - *Section 14*
 - *Section 15*
 - *Section 17*
- Penalties for overpayment



Good governance always factors in expert advice!



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CHRISTIAN ORGANISATIONS

Christian Organisations

Revisiting the Decline in Turnover Test:

- GST turnover includes:
 - *Taxable supplies*
 - *GST-free supplies*
- GST turnover excludes
 - *Input taxed supplies*
 - *Investment income*
 - *Residential rent*
- What is turnover?
 - *Section 8(8)(g) of the Rules.*
 - *Gifts (churches)*
 - Treasurer confirmed to include gifts and donations for ACNC registered charities that are non-DGR
 - *Gifts of money*
 - *Gifts of property with market value greater than \$5,000.00 (per donation)*
 - *Gifts of listed Australian shares*
 - *Excludes gifts from associates – what is an ‘associate’?*
 - *Grants*
 - Included in GST turnover as either:
 - *A supply; or*
 - *A gift (other than grants as gifts from associates)*

Benefits in ‘Wage Condition’

- *Section 10: fortnightly remuneration must be at least \$1,500.00*
 - Can choose as salary, wage allowances
 - Salary sacrifice super
 - Fringe benefits (incl exempt benefits)
 - Any combination is fine, but advised that any ‘top-up’ should be cash instead of exempt fringe benefit

- *Single touch payroll (STP)*
 - Exempt benefits to ministers have no reportable value
 - Will not be reported via STP compliant software.
 - Not include exempt benefits.

Religious Organisations

- *Pastors who are members of the board and also considered an employee:*
 - Sections 6, 7, 8 and 9 of Division 2 of the Rules
 - If pastor is on formal employment contracts

- *Who are 'employees'?*
 - JobKeeper legislation defines 'eligible employees' but not 'employees'
 - Not defined in the *Income Tax Assessment Act 1997*
 - So using common law definition

- *However on 24 April 2020 the Government clarified that:*
 - Changes will allow JobKeeper Payments to be made to religious institutions in respect of religious practitioners (with the exception of those that are students only), recognising that many religious practitioners are not 'employees' of their religious institutions.

Mission and Overseas Aid Organisations

- Mission and overseas aid orgs:
 - *Resident employees:*
 - *How to determine if resident*
 - *Are they resident or non-resident for tax purposes?*
 - *Employers qualification conditions*
 - *Where does an entity principally pursue its objectives?*
 - TR 2019/6
 - An entity does not pursue objectives in Australia merely because it
 - *Incurs expenditure in Australia; or*
 - *Undertakes some activities in Australia*
 - This might particularly be a problem for missionaries only doing mission off-shore – will not satisfy this part of the test.
 - *Carry on business in Australia*
 - Carrying on – TR 2019/1
 - In Australia – TR 2019/6 and TR 2018/5
 - A Business
 - It says in ATO that it has to be ‘a business’ in Australia, not ‘principal business’ in Aus.
 - No guidance from ATO, have to look through and make decision on which approach/definition to take.
 - *24 April 2020, Government confirms for International Aid Organisations, changes will allow entities that are endorsed under the Overseas Aid Gift Deductibility Scheme or for developed country relief to meet the requirement that not-for-profits pursue their objectives principally in Australia.*

Special Purpose Entity

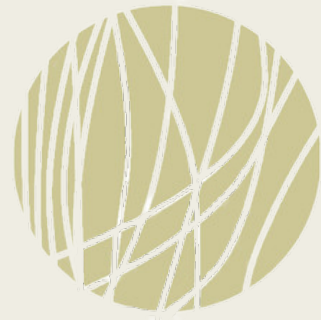
- *The Government has announced that it will be providing an alternate eligibility test for business structures that use separate entities for employment.*
- *In these structures, most or all of the employees may be employed by one entity, and the sole function of this entity is to provide the services of the employees to other members of the group.*
- *Whether the fall in turnover should be on an “arm-by-arm” basis or on the basis of the overall one entity?*
 - *May apply alternate test – to be confirmed.*



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Q & A

Contact



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Concessional pricing for Churches seeking clarification on JobKeeper

Advice (Minutes)	Original Price (incl GST)	Concessional Price (incl GST)
15 minute advice	\$110.00	\$80.00
30 minute advice	\$220.00	\$160.00
1 hour advice	\$440.00	\$320.00

See: corneyandlind.com.au/coronavirus-covid19/

Next General Churches Webinar

TUESDAY

16th June 2020 @ 12:30pm

Responding to current and historical sexual abuse claims

– and how the new legislative amendments affect Churches

[Link: corneyandlind.com.au/responding-to-current-and-historical-sexual-abuse-claims-and-how-the-new-legislative-amendments-affect-churches/](https://corneyandlind.com.au/responding-to-current-and-historical-sexual-abuse-claims-and-how-the-new-legislative-amendments-affect-churches/)

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